

THEODORA R. LEE, Bar No. 129892  
JORJA E. JACKSON, Bar No. 226707  
LITTLER MENDELSON  
A Professional Corporation  
650 California Street, 20th Floor  
San Francisco, CA 94108.2693  
Telephone: 415.433.1940  
E-mail: tlee@littler.com

Attorneys for Defendant  
NATIONWIDE LIFE INSURANCE

WILLIAM WHITEMAN  
LAW OFFICES OF WILLIAM WHITEMAN  
44 Montgomery Street, Suite 2500  
San Francisco, CA 94104  
Telephone: 415.989.3300  
E-mail: wwwhiteman@wldlawoffices.com

Attorneys for Plaintiff  
ELIZABETH ALEXANDER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ELIZABETH ALEXANDER,

Plaintiff,

v.

NATIONWIDE LIFE INSURANCE,

Defendant.

Case No. C-09-01677 CW

**STIPULATED PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited

information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Subject to Protective Order” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Subject to Protective Order.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential — Subject to Protective Order.”

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.



1 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — Subject  
2 to Protective Order”).

3 A Party or non-party that makes original documents or materials available for  
4 inspection need not designate them for protection until after the inspecting Party has indicated which  
5 material it would like copied and produced. During the inspection and before the designation, all of  
6 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL —  
7 Subject to Protective Order.”

8 After the inspecting Party has identified the documents it wants copied and produced,  
9 the Producing Party must determine which documents, or portions thereof, qualify for protection  
10 under this Order, then, before producing the specified documents, the Producing Party must affix the  
11 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL— Subject to Protective  
12 Order”) at the top of each page that contains Protected Material. If only a portion or portions of the  
13 material on a page qualifies for protection, the Producing Party also must clearly identify the  
14 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
15 each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL — Subject to Protective Order”).

17 (b) for testimony given in deposition or in other pretrial or trial  
18 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,  
19 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further  
20 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL — Subject to  
21 Protective Order.” When it is impractical to identify separately each portion of testimony that is  
22 entitled to protection, and when it appears that substantial portions of the testimony may qualify for  
23 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
24 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the  
25 specific portions of the testimony as to which protection is sought and to specify the level of  
26 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — Subject to  
27 Protective Order”). Only those portions of the testimony that are appropriately designated for  
28

1 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

2 Transcript pages containing Protected Material must be separately bound by the court  
3 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or item warrant  
4 protection, the Producing Party, to the extent practicable, shall identify the protected portions,  
5 specifying whether they qualify as “Confidential” or as “Highly Confidential — Subject to  
6 Protective Order.”

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
8 failure to designate qualified information or items as “Confidential” or “Highly Confidential —  
9 Subject to Protective Order” does not, standing alone, waive the Designating Party’s right to secure  
10 protection under this Order for such material. If material is appropriately designated as  
11 “Confidential” or “Highly Confidential — Subject to Protective Order” after the material was  
12 initially produced, the Receiving Party, on timely notification of the designation, must make  
13 reasonable efforts to assure that the material is treated in accordance with the provisions of this  
14 Order.

## 15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
17 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
18 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party  
19 does not waive its right to challenge a confidentiality designation by electing not to mount a  
20 challenge promptly after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
22 Designating Party’s confidentiality designation must do so in good faith and must begin the process  
23 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
24 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
25 for its belief that the confidentiality designation was not proper and must give the Designating Party  
26 an opportunity to review the designated material, to reconsider the circumstances, and, if no change  
27 in designation is offered, to explain the basis for the chosen designation. A challenging Party may  
28

1 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
2 process first.

3                   6.3     Judicial Intervention. A Party that elects to press a challenge to a  
4 confidentiality designation after considering the justification offered by the Designating Party may  
5 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
6 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.  
7 Each such motion must be accompanied by a competent declaration that affirms that the movant has  
8 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
9 forth with specificity the justification for the confidentiality designation that was given by the  
10 Designating Party in the meet and confer dialogue.

11                   The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
13 material in question the level of protection to which it is entitled under the Producing Party's  
14 designation.

## 15                   7.       **ACCESS TO AND USE OF PROTECTED MATERIAL**

16                   7.1     Basic Principles. A Receiving Party may use Protected Material that is  
17 disclosed or produced by another Party or by a non-party in connection with this case only for  
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
19 disclosed only to the categories of persons and under the conditions described in this Order. When  
20 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,  
21 below (FINAL DISPOSITION).

22                   Protected Material must be stored and maintained by a Receiving Party at a location  
23 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

24                   7.2     Disclosure of "CONFIDENTIAL" Information or Items. Unless  
25 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
26 may disclose any information or item designated CONFIDENTIAL only to:  
27  
28

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL-Subject to Protective Order" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL — Subject to Protective Order" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information



1 for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is  
 2 attached hereto as Exhibit A;

3 (b) In-House Counsel of a Receiving Party (1) who has  
 4 involvement in decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
 5 and (3) who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (c) Experts (as defined in this Order) (1) to whom disclosure is  
 7 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by  
 8 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below,  
 9 have been followed];

10 (d) the Court and its personnel;

11 (e) court reporters, their staffs, and professional vendors to whom  
 12 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
 13 Bound by Protective Order” (Exhibit A); and

14 (f) the author of the document or the original source of the  
 15 information.

16 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL-  
 17 Subject to Protective Order” Information or Items to all Witnesses

18 (a) Unless otherwise ordered by the court or agreed in writing by  
 19 the Designating Party, a Party that seeks to disclose to any witness, including expert witnesses, any  
 20 information or item that has been designated “HIGHLY CONFIDENTIAL — Subject to Protective  
 21 Order” first must make a written request to the Designating Party that (1) identifies the specific  
 22 HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the  
 23 witness, (2) sets forth the full name of the witness and the city and state of his or her primary  
 24 residence, (3) attaches a copy of the witness’s current resume, (4) identifies the witness’s current  
 25 employer(s), (5) identifies each person or entity from whom the witness has received compensation  
 26 for work in his or her areas of expertise or to whom the witness has provided professional services at  
 27 any time during the preceding five years, and (6) identifies (by name and number of the case, filing  
 28

1 date, and location of court) any litigation in connection with which the witness has provided any  
 2 professional services during the preceding five years.

3 (b) A Party that makes a request and provides the information  
 4 specified in the preceding paragraph may disclose the subject Protected Material to the identified  
 5 witness unless, within seven court days of delivering the request, the Party receives a written  
 6 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
 7 which it is based.

8 (c) A Party that receives a timely written objection must meet and  
 9 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter  
 10 by agreement. If no agreement is reached, the Party seeking to make the disclosure to the witness  
 11 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,  
 12 if applicable) seeking permission from the court to do so. Any such motion must describe the  
 13 circumstances with specificity, set forth in detail the reasons for which the disclosure to the witness  
 14 is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any  
 15 additional means that might be used to reduce that risk. In addition, any such motion must be  
 16 accompanied by a competent declaration in which the movant describes the parties' efforts to resolve  
 17 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets  
 18 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

19 In any such proceeding the Party opposing disclosure to the witness shall bear the  
 20 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
 21 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its witness.

22 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
 23 **PRODUCED IN OTHER LITIGATION.**

24 If a Receiving Party is served with a subpoena or an order issued in other litigation  
 25 that would compel disclosure of any information or items designated in this action as  
 26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-Subject to Protective Order" the Receiving  
 27 Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no  
 28 event more than three court days after receiving the subpoena or order. Such notification must

1 include a copy of the subpoena or court order.

2           The Receiving Party also must immediately inform in writing the Party who caused  
3 the subpoena or order to issue in the other litigation that some or all the material covered by the  
4 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
5 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
6 caused the subpoena or order to issue.

7           The purpose of imposing these duties is to alert the interested parties to the existence  
8 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
9 protect its confidentiality interests in the court from which the subpoena or order issued. The  
10 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
11 confidential material – and nothing in these provisions should be construed as authorizing or  
12 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

13           **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
15 Protected Material to any person or in any circumstance not authorized under this Stipulated  
16 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
17 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
19 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
20 Be Bound” that is attached hereto as Exhibit A.

21           **10. FILING PROTECTED MATERIAL**

22           Without written permission from the Designating Party or a court order secured after  
23 appropriate notice to all interested persons, a Party may not file in the public record in this action  
24 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
25 with Civil Local Rule 79-5.  
26  
27  
28

1                   **11. FINAL DISPOSITION**

2                   Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
3 days after the final termination of this action, each Receiving Party must return all Protected  
4 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all  
5 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
6 Protected Material. With permission in writing from the Designating Party, the Receiving Party may  
7 destroy some or all of the Protected Material instead of returning it. Whether the Protected Material  
8 is returned or destroyed, the Receiving Party must submit a written certification to the Producing  
9 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that  
10 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed  
11 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
12 summaries or other forms of reproducing or capturing any of the Protected Material.  
13 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
14 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such  
15 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
16 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

17                   **12. MISCELLANEOUS**

18                   12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the Court in the future.

20                   12.2 Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
22 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
23 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material  
24 covered by this Protective Order.  
25  
26  
27  
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 DATED:

\_\_\_\_\_  
Attorneys for Plaintiff  
ELIZABETH ALEXANDER

5  
6 DATED:

\_\_\_\_\_  
Attorneys for Defendant  
NATIONWIDE LIFE INSURANCE

8  
9  
10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11 8/21/09

12  
13 DATED: \_\_\_\_\_



\_\_\_\_\_  
CLAUDIA WILKEN  
United States Magistrate Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of ELIZABETH ALEXANDER v. NATIONWIDE LIFE INSURANCE, Case No. C-09- 01677 CW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed:

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]

1 Firmwide:91581160.1 050511.1047

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28